

**WASHINGTON. D.C.** – House Committee on Oversight and Government Reform Ranking Member Darrell Issa (R-CA) provided testimony today calling on the U.S. Environmental Protection Agency (EPA) to deny the State of California’s request to institute and enforce its own vehicle emissions standards.

“One uniform national standard for fuel economy is in every way preferable to a patchwork of state standards,” Issa said in his testimony. “Duplicative fuel economy regulations at the state level inevitably increase costs for automobile manufacturers and do not take into consideration the economy wide ramifications of regulatory decisions.”

Issa was also critical of specific regulations proposed in the state’s regulatory scheme that provide a competitive advantage to foreign automobile manufacturers. “Not only does CARB establish a separate and conflicting compliance regime from the Federal regime, but California regulations also provide foreign manufacturers with a competitive advantage over American manufacturers,” Issa pointed out. “The California law arbitrarily exempts Hyundai, Ferrari, Jaguar, Land Rover, Suzuki, Mitsubishi, and others from compliance, so long as the manufacturer delivers for sale less than 60,000 vehicles per year, on average for three years.”

The impact that state regulations will have on the state and national economy was a key concern Issa expressed, “Because of their poor design, the California standards will further deteriorate the economic prospects of America’s auto manufacturers, hampering their ability to invest in and produce the “green cars” of the future. In California alone, the Waiver jeopardizes 200,000 auto related jobs and \$3.3 billion in wages because the regulations encourage California resident to purchase vehicles in other states if the product is unavailable in-state due to product rationing. The loss in sales could cause dealers on the edge of solvency to close up shop,” he continued.

“In these perilous economic times, which have proved particularly debilitating to the automobile industry, the importance of predictable, well crafted, national standards is undeniable,” Issa said. “Moreover, the flawed structure of the California GHG regulations threatens to place an additional burden on California citizens and small businesses.”

**Congressman Issa’s full testimony is provided below:**

As Ranking Member of the House Oversight and Government Reform Committee, and the Representative of the 49<sup>th</sup> District of California, I am writing in response to the announced reconsideration of EPA's Previous Denial of a Waiver of Preemption for California State Motor Vehicle Pollution Control Standards for Greenhouse Gases. These comments specifically address both policy and technical considerations that should persuade EPA to affirm the denial of the waiver.

First, let me begin by stating that the debate over climate change is no longer whether or not it exists, but rather what can and should the United States, and the rest of the world, do to reduce greenhouse gas emissions. Most mitigation efforts will be tightly correlated to energy policy, either through consumption choices or energy conservation efforts. Therefore, any responsible strategy to provide for our nation's future energy needs will consider and account for the need to reduce our CO<sub>2</sub> and other greenhouse gas emissions.

Additionally there is no debate that climate change is inherently global in nature. The rapid mixing of CO<sub>2</sub> in the atmosphere ensures that CO<sub>2</sub> emitted anywhere in the world is quickly distributed throughout the atmosphere. This means that CO<sub>2</sub> emissions from a power plant in China impact the CO<sub>2</sub> concentrations in the atmosphere above California or any other state. It

also means that a single state or even a single nation, in isolation, is incapable of controlling the concentration of CO<sub>2</sub> and other GHG's above their geographic location. The global and diffuse nature of CO

<sup>2</sup> is in direct contrast to criteria pollutants traditionally controlled by the Clean Air Act (CAA), such as Particulate Matter (PM), Nitrogen Oxide (NO

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and understand that previous CAA interpretations may be inadequate or inappropriate.

I have been following the California Waiver issue with keen interest for many years. In the 110<sup>th</sup> Congress, Representative Henry Waxman, then Chairman of the Oversight and Government Reform Committee, launched an extensive investigation regarding the decision making process at EPA, in relation to the agency's denial. Through the course of the investigation, my staff and I became intimately familiar with the legal and policy questions surrounding the Waiver.

Accordingly, these comments are based on my participation in the Congressional investigation and my own assessment of the policy issues involved.

## **The Importance of National Uniform Fuel Economy Standard**

The California Greenhouse Gas (GHG) standards are in fact and in practice, fuel economy standards. While CARB seeks to regulate other GHG emissions, such as methane, nitrous oxide, and hydrofluorocarbons (HFCs), these emissions are trivial, and only make up 3% of a vehicle's GHG emissions, whereas CO<sub>2</sub> comprises 97% of a vehicle's GHGs. It is critical that all parties, including EPA, acknowledge, that the relationship between fuel economy and tailpipe CO<sub>2</sub> emissions is so close, such that to regulate CO<sub>2</sub> emissions from automobiles, you are necessarily regulating a vehicle's fuel economy. This conclusion should be obvious, since EPA itself determines a vehicle's compliance with CAFE standards by capturing and measuring the amount of carbon emitted from a vehicle's tailpipe!

Moreover, one uniform national standard for fuel economy is in every way preferable to a patchwork of state standards. Congress has repeatedly recognized the importance of preserving one national standard for fuel economy, in every iteration of the Energy Policy and Conservation Act (EPCA), most recently amended in 2007, by the Energy Independence and Security Act (EISA). [\[1\]](#) When Congress drafted EPCA, it explicitly preempted all states – including California – from adopting or enforcing laws “related to” fuel economy in order to ensure uniformity, and to avoid a patchwork of state regulations. [\[2\]](#)

Duplicative fuel economy regulations at the state level inevitably increase costs for automobile manufacturers and do not take into consideration the economy wide ramifications of regulatory decisions.

Under EISA, the current federal standard, Congress requires the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) to promulgate

fuel economy standards at the maximum feasible level that steadily increases in stringency each year, between model year (MY) 2011 and 2020. This congressional directive will raise vehicle fuel economy by at least 40 percent, while at the same time reducing carbon dioxide emissions by at least 30%. Meeting the new congressionally mandated CAFE standards entails enormous R&D expenditures at a time when automobile sales have dropped to historic lows and domestic manufacturers need additional billions in bridge loans from the Federal Government to prevent an immediate bankruptcy. Even so, the industry has signaled its willingness and capacity to comply with the more stringent national standard.

In contrast, California's fuel economy/GHG regulations set forth an inferior and conflicting regulatory scheme to the one Congress drafted in EISA. The California fuel economy standards are primarily inferior in their structure, which harms the interest of the citizen's of California, ensures a patchwork of state compliance regimes, and conflicts with a national effort to increase corporate average fuel economy.

Because of their poor design, the California standards will further deteriorate the economic prospects of America's auto manufacturers, hampering their ability to invest in and produce the "green cars" of the future. Moreover, each state that adopts the California regulations will increase the complexity of a manufacturer's ability to comply with the different state standards, in addition to the federal standards.

Unlike past waiver requests, there is no “California Car” for purposes of this scheme. This is because compliance with the California law is based on the combined average fuel efficiency of a manufacturer’s vehicles delivered for sale in the state. This means that each state adopting the California regime will have a unique system of compliance. Accordingly, a manufacturer can be in compliance in California, but out of compliance in Vermont, based on unique consumption patterns of each state. To be clear, if every state adopted the California standards, manufacturers would still face a patchwork of state regulations – the burden increasing with every additional state adopting the California model.

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The foreseeable result of the patchwork scheme is that manufacturers and dealers will engage in “mix shifting” by rationing larger vehicles, and discounting smaller vehicles. It is not hard to imagine that a large California family or a small business in need of a larger vehicle would be forced to pay higher prices than what the market would otherwise dictate. [\[4\]](#) This may increase the number of smaller vehicles on the road, but it does so at the expense of those who can least likely afford it – large families and small businesses.

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What is more, approval of the California Waiver will do great harm to auto dealers in California states. In California alone, the Waiver jeopardizes 200,000 auto related jobs and \$3.3 billion in wages because the regulations encourage California resident to purchase vehicles in other states if the product is unavailable in-state due to product rationing. The loss in sales could cause dealers on the edge of solvency to close up shop. In 2008, 125 California dealerships

closed their doors. Given the worsening state of the economy, California is hardly in a position to loose more jobs and sources of tax revenue.

Not only does CARB establish a separate and conflicting compliance regime from the Federal regime, but California regulations also provide foreign manufacturers with a competitive advantage over American manufacturers. The California law arbitrarily exempts Hyundai, Ferrari, Jaguar, Land Rover, Suzuki, Mitsubishi, and others from compliance, so long as the manufacturer delivers for sale less than 60,000 vehicles per year, on average for three years. <sup>[6]</sup>

In addition to these structural defects, California did not take into account the likely economic impact their state's regulations would have on other parts of the nation. In fact, during the first round of hearings considering the Waiver, CARB testified that evidence that the regulation would have negative economic consequences in manufacturing states was "outside the scope of [CARB's] analysis, which focused on California impact."

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California did not, and will not in the future, consider the impact their regulations will have on the viability of the automobile industry or the jobs dependent on that industry, or on disparate impacts between automakers. If the Waiver is granted, California lawmakers can modify fuel economy standards for all state's adopting the CARB regulations, without regard to the impact that their regulations impose on the citizens of other manufacturing states, or the national economy.



In these perilous economic times, which have proved particularly debilitating to the automobile industry, the importance of predictable, well crafted, national standards is undeniable. Moreover, the flawed structure of the California GHG regulations threatens to place an additional burden on California citizens and small businesses.

### **The California Fuel Efficiency/ GHG Standard is Not Effective in Reducing Significant Quantities of GHG Emissions**

Clearly, the California Standards are inferior in design to the Federal Standards established in the Energy Independence and Security Act. However, a significant question as to the ability of the regulation to actually combat climate change remains. In the first instance, whenever the government reduces choice, increases price, or otherwise mandates inventory the public does not want, the public will tend to keep their older vehicles longer, repairing their old cars, instead of purchasing newer more fuel efficient models. This is called the Jalopy Effect, and it reduces the impact that the California regulations could otherwise have.

Moreover, the reduction of CO<sub>2</sub> in the atmosphere will be a mere drop in the bucket compared to global energy related emissions. In its most recent submission to EPA, CARB projects that their rules will prevent the emission of 5.3 MMT in 2016 more than the Federal CAFE program in the same year. <sup>[ 8]</sup> But global emissions for 2015 are expected

to rise to at least 34.4 BMT <sup>[ 9]</sup>. Accordingly,

California drivers would be reducing CO

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emissions by less than .01 percent - that is a lot of pain for very little gain.

## **EPA Should Distinguish Between CO<sub>2</sub> and Criteria Pollutants When Regulating Pollution Under the Clean Air Act**

Whether California's continuing local and regional air pollution justified a regulatory role in a

global problem was an issue of first impression before the agency <sup>[ 10]</sup>. Administrator Johnson concluded that *“section 209(b) was intended to allow California to promulgate state standards applicable to emissions from new motor vehicles to address pollution problems that are local or regional. I do not believe section 209(b)(1)(B) was intended to allow California to promulgate state standards for emissions from new motor vehicles designed to address global climate change problems.”*

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EPA was correct to distinguish between Carbon Dioxide and traditional pollutants when interpreting and applying the Clean Air Act.

In my opinion, this legal distinction is compelled because the fundamental nature of CO<sub>2</sub> is unlike any other pollutant currently regulated under Titles I and II of the Clean Air Act. CO

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rapidly disperses throughout the earth’s atmosphere, the sources are ubiquitous, and CO

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emissions are inextricably linked to our nation’s consumption of energy. As mentioned earlier, a vehicle’s fuel efficiency is actually determined through capturing and measuring the amount of CO<sub>2</sub> emitted. Accordingly, California’s Waiver request to regulate GHG emissions from mobile sources is a unique issue before the agency, one completely distinguishable from the previous waiver requests the EPA had considered in the past.

It appears that I am not alone in my opinion. According to statements made by CARB to EPA’s ANPRM on Regulating Green House Gases Under the Clean Air Act, *“As the analysis by EPA’s*

*professional staff in the ANPR repeatedly points out, the Clean Air Act provides EPA with flexibility to regulate through a variety of approaches, including performance standards, operational controls, market based incentives and other measures, and also to tailor its traditional strategies to suit the particular challenges posed by GHG emissions.”*

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In light of this apparent willingness to treat CO<sub>2</sub> differently than other pollutants when applying other sections of the CAA, CARB is disingenuous to argue that the same flexibility should not also be applied in the context of EPA’s review of the California Waiver for GHG emissions. Accordingly, the argument made by the California Air Resources Board (CARB) in context of the California Waiver, that EPA should only base its decision on whether California continues to need to have its own motor vehicle program is flawed, at best.

## EPA Should Clarify Legal Uncertainty Over Scope Waiver Review

EPA has an obligation to clarify the precise nature of the analysis it conducts when analyzing a waiver request under section 209. Since California adopted the fuel economy /GHG regulations, our legal system has produced several confusing and contradictory decisions regarding the relationship of Sec. 209 of the CAA to the Energy Policy and Conservation Act (EPCA). As a Member of Congress, I request EPA state clearly in the record whether the agency considered EPCA factors in making its decision, as is suggested in *Green Mountain v. Crombie*, <sup>[ 13]</sup> or if their review is “modest in scope” and does not include a consideration of whether the regulations before it conflict with a federal law other than the CAA, as *Motor & Equipment Manufacturers Ass’n v. Nichols* suggests

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. Such a clarifying statement is necessary in order to give both statutes their full effect and provide clarity to all three branches of government.

## **Conclusion**

There is no doubt that climate change is a serious challenge facing the United States and the

World. The United States must do more to increase our energy efficiency, while also increasing access to alternative, less carbon intensive sources. This transition will not be easy or inexpensive. This transition must occur through the implementation of the most sensible and efficient laws and regulations our government can put forth. The California fuel economy/GHG regulations are not efficient and they impose unnecessary and costly burdens on automobile manufacturers and dealers as well as consumers in California states. While the Supreme Court recognized EPA's ability to regulate CO<sub>2</sub> under the Clean Air Act, this does not remove the discretion of the Administrator to distinguish between carbon dioxide and other traditional criteria air pollutants. Accordingly, EPA should affirm the denial of the California Waiver.

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[\[1\]](#) Energy Independence and Security Act Pub. L. No. 110-140 (2007).

[\[2\]](#) Energy Policy and Conservation Act, 49 U.S.C. Sec. 32919(a).

[\[3\]](#) Only if consumers in every CARB state were to buy vehicles in the same proportion as California consumers would automakers compliant in California also be in compliance in every other CARB state.

[\[4\]](#) See Patchwork Proven, Why a Single National Fuel Economy Standard Is Better For America Than A Patchwork of State Regulations 26 National Association of Dealers (2009).

[\[5\]](#) In litigation over the proposed fuel economy standards, large volume manufacturers stated *u*

*nder oath*

that compliance with the regulation is not technically feasible absent product restrictions. Consumer choice, specifically in reference to the availability of light trucks and SUVs, will be severely limited.

[6] CARB, Regulations to Control GHG emissions from Motor Vehicles, Final Statement of Reasons, PP 321-22, August 4, 2005.

[7] See CARB, *"Regulations to Control Greenhouse Gas Emissions from Motor Vehicles: Final Statement of Reason."* August 4, 2005, page 273.

[8] See CARB, Addendum to February 25 Technical Assessment, vi, May 8, 2008, *available at* [http://www.arb.ca.gov/cc/ccms/reports/final\\_pavleyaddendum.pdf](http://www.arb.ca.gov/cc/ccms/reports/final_pavleyaddendum.pdf).

[9] Projections: EIA, World Energy Projections Plus, International Energy Annual 2005 (June-Oct. 2007), Energy Information Agency, *available at*: [http://www.arb.ca.gov/cc/ccms/reports/pavleycafe\\_reportfeb25\\_08.pdf](http://www.arb.ca.gov/cc/ccms/reports/pavleycafe_reportfeb25_08.pdf)

[10] See Waiver for California Diesel Particulate Standard, 49 F.R. 18887 (May 3, 1984) (This decision is the only precedent cited to support the proposition that California need only demonstrate that it needs its own motor vehicle program to meet certain general compelling and extraordinary needs. In this case CA was seeking to regulate particulate matter emissions, and opponents pointed out that the circumstances were not unique to California)

[11] California State Motor Vehicle Pollution Control Standards; Notice of Decision Denying a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, 73 Fed. Reg. 12156, 57 (March 6, 2008).

[12] Letter from Attorneys General of the States of California, et. al. to EPA (November 26, 2008), *available at*: <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=EPA-HQ-OA>

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[\[13\]](#) *Green Mountain Chrysler-Plymoth-Dodge-Jeep et.al Crombie*, F.Supp.2d 295 (D. Vt. 2007).

[\[14\]](#) *Motor & Equipment Manufacturers Ass'n v. Nichols*, 142 F.3d 449, 467 (D.C.Cir. 1998).